

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 3508-09
Bill No.: SCS for HS for HCS for HBs 1654 & 1156
Subject: Elderly; Medicaid; Nursing and Boarding Homes; Health Dept.
Type: #Corrected
Date: May 9, 2002
Office of Attorney General revised response.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
General Revenue#	(\$4,243,076 to \$6,564,216)	(\$4,223,951 to \$6,594,413)	(\$4,219,019 to \$6,600,301)
Total Estimated Net Effect on <u>All</u> State Funds**	(\$4,243,076 to \$6,564,216)	(\$4,223,951 to \$6,594,413)	(\$4,219,019 to \$6,600,301)

* Savings netted against costs.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Unemployment Compensation Trust	(\$40,000,000)	(\$40,000,000)	(\$40,000,000)
Federal Funds#	(\$2,000,000)	(\$2,000,000)	(\$2,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds**	(\$42,000,000)	(\$42,000,000)	(\$42,000,000)

** Revenues, savings, losses and expenditures exceed \$460,000 annually and net to \$0.
Excludes Unemployment Compensation Trust Fund Benefits Loss and foregone federal grants.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2003	FY 2004	FY 2005
Local Government	(Unknown exceeding \$100,000)	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 23 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Missouri House of Representatives (MHR)** stated the MHR is assuming any joint committee costs would be absorbed in a joint committee appropriation established for joint committee activities.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** stated the MHP assumes most investigations would be handled by the local law enforcement and no fiscal impact is anticipated.

The Patrol's Criminal Records and Identification Division is currently conducting background searches for employment purposes, thus the impact would be minimal

Officials from the **Office of State Courts Administrator, Office of Administration - Division of Budget and Planning, Department of Elementary and Secondary Education, Department of Mental Health and Missouri Health Facilities Review Committee** assume the proposed legislation will have no fiscal impact on their organizations.

Officials from the **Department of Labor and Industrial Relations (DOL)** stated the U.S. Department of Labor (USDOL) has informally responded to the proposed legislation. The USDOL indicates a potential conformity issues exists in that, "The agency must make a determination based on the facts of the case." Section 3304(a)(10), FUTA, does not allow a cancellation of wage credits or a reduction of benefit rights except for fraud, disqualifying income, or misconduct connected with work. "This means the work from which they are separated." Under the proposed changes the action that put someone on the list may have been prior to being employed by the separating employer. "The misconduct must be connected with the work that is the basis of the application for UC."

NOTE: The DOL officials also stated the proposed legislation appears to contain language that does not conform to Federal law. This could cost Missouri employers as much as \$992 million annually due to the loss of certification for Federal Unemployment Tax Act (FUTA) credits.

Officials from the **Office of Administration - Division of Budget and Planning, Coordinating Board for Higher Education and Missouri Senate** did not respond to our request for a statement of fiscal impact.

Officials from the **Office of State Public Defender (SPD)** did not respond to our request for a statement of fiscal impact. However, in response to similar legislation introduced this session, the SPD officials stated for the purpose of the proposed legislation, the SPD has assumed that existing staff could provide representation for those cases arising where indigent persons were charged with failure to report elder abuse, or abusing or neglecting a resident of a facility or

ASSUMPTION (continued)

abusing or neglecting an eligible adult not residing in a facility, or failing to disclose criminal history on an application to work in an elder facility or making a false report of elder abuse or neglect or discloses the time of an unannounced inspection to any person not involved in inspection or has sexual contact with a resident. The SPD further assumes that existing staff could provide representation for indigent persons charged with having sexual contact with a resident or client of a facility. In FY 01, the SPD provided representation in 18 elder abuse cases. Passage of more than one similar bill would require the SPD system to request increased appropriations to cover cumulative costs of representing the indigent accused of the additional crimes proposed in the legislation.

Officials from the **Department of Insurance (INS)** did not respond to our request for a statement of fiscal impact. However, in response to similar legislation introduced this session, INS officials stated there is a single PACE HMO in Missouri that serves less than 150 people and is not in the commercial market. There will be no fiscal impact to the INS.

Officials from the **Department of Social Services (DOS) - Division of Medical Services (DMS)** provided the following assumptions related to the proposed legislation:

Section 198.074 - Immunizations in LTC Facilities:

The DMS is assuming that the costs of the immunization requirements will be covered through the Medicaid pharmacy program and not included the nursing facility per diem rate. We are also assuming that some residents 65 years of age or older are already receiving the immunizations through their physician. We have no way of determining the number of residents that would be affected by the new legislation as some already receive these services. Medicare Part B covers both immunizations. All calculations were figured assuming all residents 65 years of age or older without Medicare Part B coverage would be affected.

During FY 01, there were 34,024 of Medicaid nursing home residents 65 years of age or older. 92.3% of Medicaid nursing home residents 65 years of age or older have Medicare Part B coverage, or 7.7% do not.

According to the Pharmacy Unit within DMS, the price of the immunization for influenza is a flat rate of \$5.13 no matter what brand is given. The price of the immunization for pneumonia is an average of the wholesale price and is, therefore, effected by the brand given; however, \$21.00 is the average rate.

The projected cost for FY03 is \$68,457; FY04 is \$71,195; and FY05 is \$74,043. A federal match rate of 61.23% is used each year.

ASSUMPTION (continued)

Calculation:

Number of Medicaid residents 65 year of age or older - FY 01	34,024
Percent without Medicare Part B coverage	<u>7.70%</u>
Number of Medicaid residents which Medicaid Pharmacy program would cover immunizations.	2,620

Influenza immunization cost	\$5.13
Pneumonia immunization cost	<u>\$21.00</u>
Total immunization cost per unit	\$26.13

Annual cost for FY 03	\$68,457
Annual cost for FY 04 (trended 4%)	\$71,195
Annual cost for FY 05 (trended 4%)	\$74,043

FY 04 and 05 were trended forward by 4% because the cost of the pneumonia immunization is based on the average wholesale cost and would increase accordingly (4% is the normal trend used by DMS for Medicaid costs).

Sections 198.082 - Nurse Aide Training:

The proposed legislation will not have a fiscal impact on the DMS. The reimbursement for the training is not changed. Payment for the training is made after the nurse aide has successfully completed the training course and his/her name has been added to the Missouri Department of Health and Senior Services Nurse Assistant Register. The DMS may reimburse the nursing facilities earlier since the training must be completed within 6 months of employment instead of 90 days. Also, the on-the-job training component must be completed within 6 months of employment.

Section 354.407 - PACE:

The proposed legislation would allow religious or charitable organizations doing business for the operation of a PACE program approved by CMS to not have to obtain an HMO license. Today a PACE provider is required to have an HMO license. The HMO license requires the provider to have a bond. The current PACE provider agreement does not require the provider to obtain a bond. Therefore, in the future, to implement hold harmless 42 CFR 460.70, DMS will require a bond or some legal instrument to meet this requirement.

DMS assumes that by not requiring an HMO license there will be more providers. However, the cost to serve more providers will be offset of the PACE program to the nursing home care costs.
ASSUMPTION (continued)

Due to the time it takes for a PACE sight to become established, DMS might not see the offset to

the fiscal note for some years after the fiscal note.

DMS assumes that there will not be a fiscal impact.

Section 660.252 - Medicaid Participation Agreements:

The provision of the bill that requires all Medicaid participation agreements with in-home service providers to include a requirement that all in-home service employees receive training on identification and prevention of elder abuse and neglect will not have a fiscal impact on the DMS. Currently there is an administrative regulation (13 CSR 70-91.03) that requires providers to report instances of abuse and neglect. In order for the providers to do this, the providers must train their staff on elder abuse and neglect. The provider agreements can be updated to include the necessary language without a material fiscal impact to the DMS.

This section also requires the participation agreements include facilities to comply with the provision of sections 660.600 to 660.608 regarding access to facilities by ombudsmen or representatives of the office of the state ombudsman for long-term care facility residents. The agreements can be updated to include this language without a material fiscal impact to the DMS.

Section 1 - Division of Assets for RCF Residents:

The proposed legislation will have a fiscal impact on the DMS. More individuals will be Medicaid eligible if the division of assets is applied to persons living in a RCF.

The Division of Family Services estimates there are 64 individuals who would become Medicaid eligible with the passage of this legislation. This includes 3 individuals who would live in a skilled nursing facility. It should be noted, the proposed legislation does not include Intermediate Care Facilities (ICF) and Skilled Nursing Facilities (SNF); however, they are part of the Supplemental Nursing Care program. Cost for residents living in a SNF are included in the fiscal impact. The costs are shown separately.

The cost per eligible is \$656.40/month. The average is based on the last three months of actual expenditures - hospital, dental, physician services, personal care and rehabilitation & specialty services. (The RCF resident is not eligible for all home and community services - only personal care.) RCF residents - 17 RCF I and 44 RCF II = 61 eligibles x \$656.40 = \$40,040.40 per month.

SNF residents - 3 x \$656.40 = \$1,969.20 per month.

A 4% inflation factor was applied to both FY 04 and FY 05.

FY 03:

ASSUMPTION (continued)

RCF residents - \$40,040.40 x 10 months = \$400,404

SNF residents - \$1,969.20 x 10 months = \$19,692

Total \$420,096

FY 04:

RCF residents - $\$41,642.02 \times 12 \text{ months} = \$499,704$

SNF residents - $\$2,047.97 \times 12 \text{ months} = \underline{\$24,576}$

Total \$524,280

FY 05:

RCF residents - $\$43,307.70 \times 12 \text{ months} = \$519,692$

SNF residents - $\$2,129.89 \times 12 \text{ months} = \underline{\$25,559}$

Total \$545,251

Due to the division of assets for married couples proposed in the legislation, individuals are provided the opportunity to enter an RCF I/II facility over and ICF/SNF nursing facility. We estimate that between 10% and 35% will choose RCF over a nursing facility resulting in a cost avoidance.

$63 \times 10\% = 6.3$ individuals or 6

$63 \times 35\% = 22.05$ individuals or 22

Medicaid nursing facility costs approximately \$29,768 per individual per year.

Medicaid services (hospital, pharmacy, physician, personal care, rehabilitation services) - \$7,877/year. Total cost/eligible \$37,645 4% inflation added for each year - FY 04 and FY 05.

FY 03:

10% cost avoidance

SNF/ICF residents to RCF residents - $(\$37,645 \times 6) \times 10/12 = \$188,225$

\$72,975 - GR (38.77%)

\$115,250 - FF (61.23%)

35% cost avoidance

SNF/ICF residents to RCF residents - $(\$37,645/\text{yr} \times 22) \times 10/12 = \$690,158$

\$267,574 - GR (38.77%)

\$422,584 - FF (61.23%)

FY 04:

10% cost avoidance

ASSUMPTION (continued)

SNF/ICF residents to RCF residents $(\$37,645/\text{yr} \times 6) = \$225,870 \times 104\% = \$234,905$

\$91,073 - GR (38.77%)

\$143,832 - FF (61.23%)

35% cost avoidance

SNF/ICF residents to RCF residents - $(\$37,645/\text{yr} \times 22) = \$828,190 \times 104\% = \$861,318$

\$333,933 - GR(38.77%)

\$527,385 - FF (61.23%)

FY 05:

10% cost avoidance

SNF/ICF residents to RCF residents $(\$37,645/\text{yr} \times 6) = \$225,870 \times 104\% \times 104\% = \$244,301$

\$94,715 - GR(38.77%)

\$149,586 - FF(61.23%)

35% cost avoidance

SNF/ICF residents to RCF residents - $(\$37,645/\text{yr} \times 22) = \$828,190 \times 104\% \times 104\% = \$895,771$

\$347,291 - GR(38.77%)

\$548,480 - FF(61.23%)

Officials from the **Office of Prosecution Services (OPS)** assume the proposed legislation would result in "costs exceeding \$100,000" based on previous statements provided by the **Cole County Prosecuting Attorney's Office (CCPAO)** to similar legislation.

In response to similar pieces of legislation, the CCPAO stated that a complete re-write of the existing laws in this subject area would be necessary. The proposal affects the stealing, assault, and abuse statutes. This will require the local prosecuting attorney offices to re-write forms and instructions related to elder abuse. This will also require an update to the computer network being installed in the prosecutors offices statewide. Although the CCPAO could not give a precise estimate of these costs, the costs are expected to exceed \$100,000 in the first year alone.

#Officials from the **Office of Attorney General (AGO)** stated the proposed legislation eliminates the AGO's jurisdiction to prosecute medicaid fraud cases under section 191.910.

ASSUMPTION (continued)

Current law, enacted in 1994, qualifies the state for approximately \$2,000,000 per year in federal grants. The proposed legislation eliminating the AGO's authority would cut off these federal funds.

The medicaid fraud unit, funded by the federal grants, has recovered approximately \$8,000,000

in civil penalties for the state over the last 18 months. The AGO, therefore, assumes that in addition to the loss of oversight and service to the state, this proposal would cost the state \$4,000,000 to \$6,000,000 per year in foregone civil penalties, and approximately \$2,000,000 per year in foregone federal grants.

Officials from the **Department of Corrections (DOC)** stated that they cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase in operational cost either through incarceration (FY 01 average of \$35.78 per inmate per day, or an annual cost of \$13,060 per inmate) or through supervision provided by the Board of Probation and Parole (FY 01 average of \$3.34 per offender per day, or an annual cost of \$1,219 per offender). Supervision by the DOC through probation or incarceration would result in additional unknown costs to the DOC. Eight (8) persons would have to be incarcerated per fiscal year to exceed \$100,000 annually. Due to the narrow scope of this new crime, it is assumed the impact would be less than \$100,000 per year for the DOC.

Officials from the **Department of Health and Senior Services (DOH)** stated in completing the fiscal estimate of the proposed legislation, the DOH makes the following assumptions:

Section 187.010 Definitions - No fiscal impact

Section 187.015 Rule authority - No fiscal impact

Section 187.020 - Mandated reporting of abuse/neglect

Changes the professionals named as mandated reporters and requires that reports be made within 24 hours with misdemeanor penalty provision; penalty provision for false reports and offers protection for reporting. **No fiscal impact.**

Section 187.024.2 Abuse/Neglect of Facility Residents - In FY01, the DOH received 500 reports involving imminent harm. Department personnel were able to commence on-site investigations on 85% or 437 of the reported incidents within 24 hours. However due to an ASSUMPTION (continued)

insufficient number of staff, the DOH was unable to commence on-site investigations on 13% or 63 reported incidents within 24 hours.

To ensure the DOH is able to comply with the requirement to commence on-site investigations on all reported incidents of imminent harm within 24 hours, the DOH will need **two (2) additional Facility Adv Nurse** positions to conduct all phases of the on-site complaint

investigation within the required time frame.

Section 187.028 Abuse/Neglect of Eligible Adult Not Residing in a Facility

187.028 1. allows the department to authorize units of in-home services provider nurse hours to assist or aid the client's case manager in the investigation of suspected abuse/neglect of in-home service clients. The DOH assumes for the purposes of this fiscal note, that authorize means to reimburse for utilization of in-home provider nurses in investigations and that references to in-home services provider nurses are registered nurses licensed pursuant to chapter 335, RSMo.

In FY01, the former Division of Aging completed 12,733 investigations of hotline reports and the division estimates that there will be 14,039 investigations in FY03. In FY00, 9.9% of the hotline reports were made by in-home provider agencies. The department estimates that 9.9% (1,390) of the 14,039 hotline investigations would be completed on behalf of in-home services clients reported by the in-home services providers. The department would utilize the in-home services provider nurse for assistance with these investigations. It is estimated that the nurse visit portion would require approximately 4 hours or units.

Of the 54,038 in-home services clients, 13.58% are non Medicaid clients. Therefore, DOH estimates an additional 1,390 authorized RN units will cost approximately \$28,579 (1,390 x .1358 x 4 hours x \$37.85 per unit). It is assumed by the division that the balance of the costs for additional nurse visits would for Medicaid eligible clients and should be included in the fiscal note response from the Division of Medical Services.

The section also requires contact with the physician regarding the progress of the investigation, if the physician is the reporter and currently field staff are required to maintain contact with the reporter. Lastly, it requires written notification to all mandated reporters.

187.028. 3. adapts language from existing statute and combines protection of eligible adults with the protection previously afforded in-home clients. Expands the authority of the division, prosecutor, or the Attorney General to petition the court for temporary care and protection and removal of an eligible adult not residing in a facility from his/her home. Expands the felony criminal penalty to all perpetrators of abuse or neglect.

The cost of alternative placement is an issue because not all individuals who are victims of ASSUMPTION (continued)

abuse/neglect are eligible for or in need of nursing facility placement or hospitalization. Because there is no mention as to where the adult should be placed nor the financial responsibility for an alternative placement, the department assumes that the expense will be borne by the individual or as ordered by the court of jurisdiction. It is the assumption of the division that the cost of alternative placement would not be borne by the department, and therefore anticipates **no fiscal impact**. If, however, if the sponsor intends for the DOH to absorb the cost associated with out-of-home placement, the fiscal impact is **indeterminate**.

187.028. 9. Expands the authority of the department to place any person on the EDL who has been found guilty of abuse/ neglect. **No fiscal impact.**

Section 187.030 Elder Abuse and Law Enforcement

1. The DOH assumes that current policy requirements for involvement of law enforcement to co-investigate cases in which there is an allegation that a crime has been committed meets the legislative intent of this statute and therefore assumes **no fiscal impact.**

2. Requires the department and law enforcement agencies to require training and cross-training of personnel regarding the proper handling of cases involving elder abuse and cooperatively develop a checklist for use by DOH and law enforcement personnel to follow when investigating possible elder abuse.

The DOH assumes the intent of the sponsor is that department staff and law enforcement officials statewide will require training on the proper handling of cases involving elder abuse. There will be a window of time in which the state will have to bring 800+ division of senior services (formerly division of aging, home and community services) and division of health standards licensure staff (formerly division of aging, institutional services) and approximately 29,000 law enforcement officials (representing over 1,200 law enforcement agencies) into compliance with the training requirements of the legislation.

The law enforcement agencies will absorb the cost of training law enforcement officials. Once existing law enforcement officers receive the training, the curriculum will be incorporated into the required training for state certification in Missouri. There are 18 law enforcement training academies located throughout the state which offer the required 470 hours of training for all law enforcement officials to become certified.

The DOH will need **one Public Health Manager B1** position to oversee the administrative responsibilities outlined in the bill. The administrator will work with the Highway Patrol, Sheriff's Association, Law Enforcement Training Academies, and other such agencies and associations to fulfill the requirements of joint training, developing accurate curriculum including the mandated checklist to ensure thorough investigations of elder abuse cases and under 660.252 ASSUMPTION (continued)

a proficiency exam for use with in-home provider agencies for new applicants. Once the proficiency exam and the law enforcement curriculum has been developed, the administrator will act as the division liaison for law enforcement the over 1,200 law enforcement agencies to ensure that elder abuse training is accurate and revisions are made as necessary in accordance with state laws.

The DOH will conduct training for 800+ employees within the division in six to eight sessions across the state (depending on attendance by law enforcement personnel). The division estimates that 16 hours of training across three days will be sufficient, requiring two overnights for

approximately 40% of the staff. All staff will require meal allowances and some travel reimbursement. Anticipating maximum carpool and state cars usage, mileage is based on an average of 75 miles per car per round trip. The division estimates the cost of training as follows (no cost for “trainers” included):

Total Department of Health and Senior Services Staff/Personnel to be trained	800
Approximate number requiring two overnight accommodations (40%)	320
Hotel Accommodations: \$65.00 per overnight two nights (320 x \$65 x 2)	\$41,600
Meal Allowance: \$23.00 per day; two days (800 x \$23 x 2.5)	\$46,000
Approximate Mileage: (1 car per 3 employees = 800/3 = 267 cars)	
75 average miles round-trip per car (267 x 75 x \$0.315)	<u>\$6,308</u>
Total Estimated Cost of Training Department of Health and Senior Services Staff	\$93,908

Oversight assumes that training would be held at various sites around the state. Oversight assumes total costs of \$51,327.

Section 187.034 Immunity for Reporting/Cooperating with Investigation

Adapts current language regarding protection of reporters and individuals cooperating with investigations. **No fiscal impact.**

Section 187.040 EDL

The Employee Disqualification List (EDL) is a list of persons who have been finally determined to have recklessly, knowingly, or purposely abused, neglected or financially exploited an elderly or disabled person. Currently the EDL contain the names of 719 persons.

This new legislation will expand the EDL to also include the names of any person employed by providers licensed by chapter 190 and chapter 197 or sections 660.400 to 660.420. This would include such persons as emergency medical technicians, paramedics, ambulance drivers and employees of hospitals, home health, hospice agencies, and employees of adult day care programs. The additional names could potentially include any of the currently licensed emergency medical technicians and paramedics (12,957) or any employee of 139 licensed hospitals, 189 licensed home health agencies and 70 licensed hospice agencies.

ASSUMPTION (continued)

Before a person's name can be added to the EDL, they are entitled to due process that may include a hearing conducted by the department. To ensure the DOH is able to conduct hearings in a timely manner, we believe an **additional hearings officer** as well as **clerical support** is needed.

Section 187.050 Misappropriation of property or funds

The department assumes that law enforcement agencies will determine the fiscal impact for receiving and processing reports of misappropriation and/or falsification. Mandates the reporting, investigation by the department, and permits the department to add to the EDL any perpetrator finally found to have misappropriated funds or property of an eligible adult and any

person that has falsified service delivery documents. Imposes criminal penalties and permits the department to share information with power of attorney or guardian of the eligible adult. **No fiscal impact.**

Section 187.080 EDL Statute

Adapts current language and contains some new language governing the EDL process. The division anticipates **no significant fiscal impact.**

Section 187.084 Criminal Background Checks

Adapts language from current statute governing requirements for criminal background checks. The DOH anticipates **no fiscal impact.**

Section 187.087 Confidentiality of Reports

Adapts current language regarding confidentiality of reports; **no fiscal impact.**

Section 187.090 Investigative Authority of the Department Director

Grants authority to the department director for answers to interrogatories and production of documents as necessary in an investigation or inspection. Further allows the department to deny, suspend or revoke a license or contract for failure to comply. The DOH anticipates **no fiscal impact.**

Section 187.102 Cooperation with Department of Mental Health

Requires department staff to cooperate with the Department of Mental Health in the investigation of abuse and neglect when appropriate. This is currently required by division policy. The DOH anticipates **no significant fiscal impact.**

Sections 191.900 and 191.910 Authority of the Attorney General - No fiscal impact.

Sections 198.006, 198.012, 198.022, 198.029, 198.030, 198.032, 198.036, 198.039, 198.067, 198.073, 198.080, 198.082, 198.085, 198.086, 198.088, 198.090, 198.093, 198.345, 198.525, 198.526, 198.531, and 198.532 - No fiscal impact.

ASSUMPTION (continued)

Section 198.019 The DOH assumes current staff in our Compliance Unit will be sufficient to document and forward to the appropriate units within the department a listing of those facilities whose compliance history should be considered when issuing or renewing a license. We believe the fiscal impact of this requirement would not be significant. However, dependent upon the criteria that are established for not licensing a facility, a future request for FTE for the Compliance Unit may be needed.

Section 198.074 Although the DOH inspection process will need to be expanded to ensure facility compliance with requirement to provide immunizations to residents, we believe the affect on workload will be minimal and can be handled by existing staff.

Section 208.156 Relates to the Administrative Hearing Commission; No fiscal impact.

Section 210.933 Elder Care Workers and the Family Care Safety Registry

Permits elder care providers to access Family Care Safety Registry in lieu of the EDL requirements of 187.080 and Criminal Background check required pursuant to 187.084. **No fiscal impact.**

Section 344.050 Board of Nursing Home Administrators - No fiscal impact.

Section 354.407 Information regarding the PACE (Program for All-Inclusive Care for the Elderly) - No fiscal impact.

Section 491.076 Admissibility of Statements by Seniors or Disabled Adults - No fiscal impact.

Section 565.200 Sexual Contact by Owner/Employee of a Skilled Nursing Facility - No fiscal impact.

Section 630.140 Confidentiality of records regarding the Department of Mental Health - No fiscal impact.

Section 630.167 Investigation requirements for Department of Mental Health - No fiscal impact.

Section 660.030 Failure to Report and Privileged Communication - No fiscal impact.

Section 660.050 Authority of the Division of Aging - Incorporates new Chapter 187. No fiscal impact.

ASSUMPTION (continued)

Section 660.252 Medicaid Participation Agreements - No fiscal impact.

Section 660.263 Confidentiality and Release of Records - No fiscal impact.

Section 660.270 Entry Warrants - No fiscal impact.

Section 660.302 Investigation authority and referrals to law enforcement - No fiscal impact.

Section 1. Requires the division of family services to use spousal impoverishment eligibility determination for residents of RCFs. **No fiscal impact.**

Section 2. Prohibits retaliation against employees of facilities who report to medical services

possible violations of section 1. **No fiscal impact.**

Section 3. Establishes a Joint Committee on Nursing Home Medicaid reimbursement. **No fiscal impact.**

Officials from the **Office of the Secretary of State (SOS)** state this bill enacts and modifies various provisions regarding protection of the elderly. The Department of Health and Senior Services and the Division of Medical Services will promulgate rules to implement this bill. Based on experience with other divisions, the rules, regulations and forms issued by the Department of Health and Senior Services and Division of Medical Services could require as many as 92 pages in the *Code of State Regulations*. For any given rule, roughly one-half again as many pages are published in the *Missouri Register* as are published in the Code because cost statements, fiscal notes and notices are not published in the Code. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. The actual costs could be more or less than the numbers given. The fiscal impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn. The SOS estimates the cost of this legislation to be \$5,658 [(92 pp x \$27) + (138 pp x \$23)].

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
GENERAL REVENUE			
<u>Savings - Department of Social Services</u>			
Division of Assets for RCF Residents	<u>\$72,975 to</u> <u>\$267,574</u>	<u>\$91,073 to</u> <u>\$333,933</u>	<u>\$94,715 to</u> <u>\$347,291</u>
Total <u>Savings</u> - Department of Social Services	<u>\$72,975 to</u> <u>\$267,574</u>	<u>\$91,073 to</u> <u>\$333,933</u>	<u>\$94,715 to</u> <u>\$347,291</u>
<u>#Loss - Office of Attorney General</u>			

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
#Lost Civil Penalties	<u>(\$4,000,000 to \$6,000,000)#</u>	<u>(\$4,000,000 to \$6,000,000)#</u>	<u>(\$4,000,000 to \$6,000,000)#</u>
#Total <u>Loss</u> - Office of Attorney General	<u>(\$4,000,000 to \$6,000,000)#</u>	<u>(\$4,000,000 to \$6,000,000)#</u>	<u>(\$4,000,000 to \$6,000,000)#</u>
<u>Costs - Department of Corrections</u>			
Additional commitments and parole	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
Total <u>Costs</u> - Department of Corrections	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>	<u>(Unknown less than \$100,000)</u>
<u>Costs - Department of Social Services</u>			
Immunizations in LTC Facilities	<u>(Unknown less than \$26,541)</u>	<u>(Unknown less than \$27,602)</u>	<u>(Unknown less than \$28,706)</u>
Division of Assets for RCF Residents	<u>(\$162,871)</u>	<u>(\$203,263)</u>	<u>(\$211,394)</u>
Total <u>Costs</u> - Department of Social Services	<u>(Unknown less than \$189,412)</u>	<u>(Unknown less than \$230,865)</u>	<u>(Unknown less than \$240,100)</u>
<u>Costs - Department of Health and Senior Services</u>			
Personal Service Costs (5 FTE)	<u>(\$151,188)</u>	<u>(\$185,961)</u>	<u>(\$190,609)</u>
Fringe Benefits	<u>(\$54,443)</u>	<u>(\$66,965)</u>	<u>(\$68,638)</u>
Equipment and Expense	<u>(\$75,559)</u>	<u>(\$63,448)</u>	<u>(\$65,350)</u>
Training - DOH Staff and Law Enforcement	<u>(\$42,773)</u>	<u>(\$8,811)</u>	<u>\$0</u>
Additional Nurse Staff Visits	<u>(\$23,816)</u>	<u>(\$29,436)</u>	<u>(\$30,319)</u>
Total <u>Costs</u> - Department of Health and Senior Services	<u>(\$347,779)</u>	<u>(\$354,621)</u>	<u>(\$354,916)</u>
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	<u>(\$4,243,076 to \$6,564,216)</u>	<u>(\$4,223,951 to \$6,594,413)</u>	<u>(\$4,219,019 to \$6,600,301)</u>
FEDERAL FUNDS			
<u>Income - Department of Social Services</u>			
Medicaid Reimbursement - Immunizations in LTC Facilities	Unknown less than \$41,916	Unknown less than \$43,593	Unknown less than \$45,337

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
Medicaid Reimbursements - Division of Assets for RCF Residents	<u>\$257,225</u>	<u>\$321,017</u>	<u>\$333,857</u>
Total <u>Income</u> - Department of Social Services	<u>Unknown less than \$299,141</u>	<u>Unknown less than \$364,610</u>	<u>Unknown less than \$379,194</u>
<u>Cost Savings - Department of Social Services</u>			
Reduced Medicaid Costs for Division of Assets for RCF Residents	<u>\$115,250 to \$422,584</u>	<u>\$143,832 to \$527,385</u>	<u>\$149,586 to \$548,480</u>
Total <u>Cost Savings</u> - Department of Social Services	<u>\$115,250 to \$422,584</u>	<u>\$143,832 to \$527,385</u>	<u>\$149,586 to \$548,480</u>
<u>Costs - Department of Social Services</u>			
Medicaid Reimbursement - Immunizations in LTC Facilities	(Unknown less than \$41,916)	(Unknown less than \$43,593)	(Unknown less than \$45,337)
Medicaid Reimbursements - Division of Assets for RCF Residents	<u>(\$257,225)</u>	<u>(\$321,017)</u>	<u>(\$333,857)</u>
Total <u>Costs</u> - Department of Social Services	<u>(Unknown less than \$299,141)</u>	<u>(Unknown less than \$364,610)</u>	<u>(Unknown less than \$379,194)</u>
<u>Loss - Department of Social Services</u>			
Loss in Federal Match for Reduced Costs - Division of Assets for RCF Residents	<u>(\$115,250 to \$422,584)</u>	<u>(\$143,832 to \$527,385)</u>	<u>(\$149,586 to \$548,480)</u>
Total <u>Loss</u> - Department of Social Services	<u>(\$115,250 to \$422,584)</u>	<u>(\$143,832 to \$527,385)</u>	<u>(\$149,586 to \$548,480)</u>
<u>#Loss - Office of Attorney General</u>			
#Lost Federal Grants	<u>(\$2,000,000)#</u>	<u>(\$2,000,000)#</u>	<u>(\$2,000,000)#</u>
Total <u>Loss</u> - Office of Attorney General	<u>(\$2,000,000)#</u>	<u>(\$2,000,000)#</u>	<u>(\$2,000,000)#</u>
<u>Loss - Department of Labor and Industrial Relations</u>			
Unemployment Compensation Trust Fund Benefits Loss	<u>(\$40,000,000)</u>	<u>(\$40,000,000)</u>	<u>(\$40,000,000)</u>

<u>FISCAL IMPACT - State Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
Total <u>Loss</u> - Department of Labor and Industrial Relations	<u>(\$40,000,000)</u>	<u>(\$40,000,000)</u>	<u>(\$40,000,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS**#	<u>(\$42,000,000)#</u>	<u>(\$42,000,000)#</u>	<u>(\$42,000,000)#</u>

**** Revenues, savings, losses and expenditures exceed \$460,000 annually and net to \$0.
 Excludes Unemployment Compensation Trust Fund Benefits Loss and # foregone federal grants.**

<u>FISCAL IMPACT - Local Government</u>	FY 2003 (10 Mo.)	FY 2004	FY 2005
LOCAL GOVERNMENT FUNDS			
<u>Costs - Prosecuting Attorneys</u>			
Upgrades to Computer Systems, Forms and Instruction Changes	Exceeds <u>(\$100,000)</u>	\$0	\$0
ESTIMATED EFFECT ON LOCAL GOVERNMENT FUNDS	Exceeds <u>(\$100,000)</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

The proposed legislation would result in significant losses to small businesses resulting from lost Federal Unemployment Tax Act (FUTA) credits. The estimated effect on small businesses is unknown, but the potential loss to all Missouri employers could exceed \$992 million annually.

DESCRIPTION

This bill modifies provisions relating to the protection of the elderly.

Definitions related to elder abuse are modified and rule authority is given to the Department. (Sections 187.010 and 187.015)

Certain persons are required to report suspected abuse or neglect of facility residents. Anyone failing to make a report within a reasonable time or filing a false report is guilty of a Class A misdemeanor. Immunity is given to reporters, unless they act negligently, recklessly, or in bad faith. The Department must maintain statistics on all deaths and must report to the Division of Health Standards and Licensure. (Section 187.020)

If a report is made about a long-term care resident, certain information must be included in the report. Within 24 hours, the Department of Health and Senior Services must initiate an investigation and notify the resident's family. If a report involves imminent harm, the Department must start an on-site investigation within 24 hours. If an investigation indicates possible abuse or neglect, the resident may be removed from the facility. Reports are confidential, with exceptions. Within five working days, the person making the report must be notified of its progress. Harassment of reporters is prohibited. Any person who knowingly abuses or neglects a resident of a facility is guilty of a Class D felony and will be placed on the employee disqualification list. (Section 187.024)

Section 187.028 contains provisions similar to Section 187.024, but for eligible adults not residing in a facility and in-home services clients. If a report is made by the client's physician, then the Department must maintain contact with the physician regarding the investigation. When a report is received by the Department, the client's case manager must involve a nurse or other professional, as appropriate. Reports are confidential, with exceptions.

The Department must investigate reports by using the procedures established in Sections 660.250 to 660.295 and must refer all suspected cases to law enforcement. (Section 187.030)

The Department and law enforcement must require elder abuse training and must develop an investigation checklist. Immunity from liability is provided to reporters unless they act in bad faith. (Section 187.040)

Section 187.050 contains provisions similar to 187.024 but for the misappropriation of property or falsification of documents of an in-home services client. Any in-home services provider or employee who performs such acts will be guilty of a Class A misdemeanor. Reports are confidential, with exceptions.

Any person placed on the EDL must be notified in writing with thirty days to respond or appeal.
DESCRIPTION (continued)

Certain persons will be automatically listed on the EDL, such as those who intentionally or negligently inflict serious physical injury or death to another. No person on the EDL may be employed by anyone receiving the list. Language is removed regarding the eligibility of a person on the EDL for unemployment benefits. Employers may not be charged for unemployment benefits if a person is removed because of placement on the EDL. Upon a finding by the Department of Labor and Industrial Relations that a person belongs on the EDL, such person will be deemed to have committed misconduct under Chapter 288. Persons listed on the EDL may request removal once every twelve months. The EDL must be distributed to area agencies on aging, emergency services, and adult day care programs. (Section 187.080)

Before allowing an employee to have contact with a resident, providers must request a criminal background check and must check the EDL. Failure to disclose will result in a Class A

misdemeanor. Failure by a provider to investigate or evidence of a pattern of violation by the provider will result in civil penalties. Providers may use private investigators. A pattern of violation is 2 violations within 12 months. Providers may use private investigators to do the background checks. (Section 187.084)

All reports of abuse or neglect will be kept confidential, with specific exceptions. Report copies may not disclose the reporter or the victim. (Section 187.087)
Allows the Department to require the production of information for investigations or inspections. Failure to comply with any request is ground for refusal, suspension, or revocation of a license or contract. (Section 187.090)

The Departments of Health and Senior Services and Mental Health must work cooperatively in the investigation of abuse and neglect, when appropriate. (Section 187.102)

The term “financial” is included in the definition of abuse and redefines “medical assistance” as any federal health care program. The term “health care provider” is also clarified as one who is paid to deliver or purports to deliver services. (section 191.900)

The Attorney General may serve subpoenas or other process in order to enforce Sections 187.020 - 187.028 and 191.900 - 191.910.

Terms related to long-term care are modified. (Section 198.006)

The provisions of Section 187.020 are included as non-applicable to certain entities, such as hospitals. (Section 198.012)

Upon licensure or renewal of a facility’s license, the Department must require a listing of the facility operator or owner’s properties. The Department must determine the facility’s compliance
DESCRIPTION (continued)

history and include facility responses to survey findings in the official departmental review. (Section 198.019)

Unless the Department determines otherwise, facilities must be subject to at least two inspections per year. (Section 198.022)

Written notice of facility noncompliance must be copied to the Attorney General. (Section 198.029)

Every residential care facility I or II, intermediate care facility or skilled nursing facility must post a current inspection report. (Section 198.030)

Sections 187.020 - 187.050 are included in the requirement for confidentiality of resident

records. Insurance carriers may not use unsubstantiated inspection or written investigation reports for insurance underwriting. The Department must obtain the name and address of the reporter after obtaining abuse and neglect information. (Section 198.032)

The Department may revoke a license if a facility fails to comply with class I, II, or III standards on 2 occasions within 12 months, refuses inspection, knowingly adversely affects health, safety, or welfare of a resident, or demonstrates financial incapacity. (Section 198.036)

Facilities have administrative appeal rights. (Section 198.039)

Penalty provisions for facilities are clarified and the Department or the Attorney General may bring an action in circuit court. At the Department's discretion, state civil penalties may be reduced based on previous federal penalties for the same violation. (Section 198.067)

The pathway to safety law for Alzheimer's residents in RCFs is modified. (Section 198.073)

A new section requires long-term care facilities and residential care facilities I and II to provide influenza and pneumonia immunizations annually or upon admission. Written consent must be obtained from the resident and his or her physician. Adult day care facilities must also inform clients regarding immunization. The Department must develop rules for documenting compliance, including the documentation of residents who refuse the immunization. The Department may not impose a violation on a facility for not making an immunization available if a shortage exists. (Section 198.074)

The Departments of Health and Senior Services, Mental Health, and Elementary and Secondary Education must collaborate on assessment procedures for long-term care services. (Section 198.080)

DESCRIPTION (continued)

A requirement is added that skilled or intermediate care nursing assistants must complete training within 6 months of employment. The Department must approve all training. (Section 198.082)

The Department must establish three classification standards, including three violation categories. (Section 198.085)

The Department must establish and implement a demonstration project to establish a licensure category for health care facilities treating Alzheimer's residents. (Section 198.086)

Facilities must establish appropriate policies and must notify staff, residents, and families of residents. (Section 198.088)

Residents may file written complaints regarding the deprivation of rights or estates within two years of the alleged violation. (Section 198.093)

Nursing home districts shall not be prohibited from establishing and maintaining senior housing within their corporate limits. (Section 198.345)

Facility inspections are required twice per year unless otherwise provided pursuant to 198.526. (Section 198.525)

Currently, Section 198.526 outlines facility inspection procedures. The Department may reduce the frequency of inspections to one per year if the facility has no class I deficiencies or class II violations during an inspection, related to the direct care of residents, and if there is no change in ownership or operation. This act provides for immediate termination and a Class A misdemeanor for any Division employee who discloses an inspection time to a facility.

Current law allows the Department to establish aging-in-place pilot programs throughout the state. This act requires the Department to base licensure procedures on the highest level of service provided at the site. (Section 198.531)

Current law allows individuals to appeal medical assistance denials. This act requires the administrative hearing commission to consider a provider's continued participation in the program. (Section 208.156)

This act also exempts 501(c)(3) programs for all-inclusive care for the elderly (PACE) projects from HMO law. (Section 354.407)

This section provides a hearsay exception for statements made by elderly or disabled individuals. (Section 491.076)

DESCRIPTION (continued)

Providers or employees of SNFs or Alzheimer's units are prohibited from having sexual contact with residents. Anyone having sexual contact is guilty of a Class B misdemeanor with subsequent violations being a Class A misdemeanor. Anyone have sexual intercourse is guilty of a Class D felony with subsequent violations being a Class C felony. This section does not apply to persons married to a resident. Consent of the victim is not a defense. (Section 565.200)

The Department of Health and Senior Services is given equal access to information provided by mental health facilities or the Department of Mental Health. (Section 630.140 and 160.167)

With the exception of an attorney or member of the clergy, no legal privilege will exempt a person from the disclosure of records related to abuse and neglect. The Department shall have access to financial, medical, and mental health records. (Section 660.030)

This act requires all Medicaid participation agreements to include a requirement for abuse and neglect training. Agreements must allow ombudsman access to the facility. (Section 660.252)

This act clarifies that abuse and neglect reports are not public records. (Section 660.263)

The Department may enjoin interference with an investigation or inspection. (Section 660.270)

The Department must refer all suspected cases of elder abuse to the appropriate law enforcement agency. (Section 660.302)

The Division of Family Services must comply with Medicaid law on institutionalized and impoverished spouses when determining Medicaid eligibility. (Section 1)

This act prohibits employee discrimination by skilled nursing facilities. (Section 2)

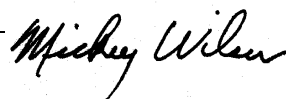
This act establishes the Joint Committee on Nursing Home Medicaid Reimbursement, consisting of ten members of the General Assembly. (Section 3)

This legislation is not federally mandated and would not duplicate any other program.

SOURCES OF INFORMATION

Department of Social Services
Missouri House of Representatives
Office of Prosecution Services
Missouri Health Facilities Review Committee
Department of Labor and Industrial Relations
Office of State Courts Administrator
Department of Elementary and Secondary Education
Office of Attorney General
Department of Health and Senior Services
Office of Secretary of State
Department of Public Safety - Missouri Highway Patrol
Department of Mental Health
Office of Administration - Division of Budget and Planning

**NOT RESPONDING: Coordinating Board for Higher Education, Missouri Senate,
Department of Insurance and Office of State Public Defender**



Mickey Wilson, CPA
Acting Director
May 13, 2002